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FILED
04/05/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0908-R-2023
Lambert, Kathryn
4.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Pierce Family LLC

NOTICE OF INTENT TO APPEAR: Emigrant Peak Ranch LLC

CASE 43B-0908-R-2023
43B 193598-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Pierce Family LLC claim 43B 193598-00 appeared in the Preliminary Decree with the following remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREEED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 200 MINER'S INCHES DECREEED IN CASE NO. 2112 , PARK COUNTY. 193596-00, 193598-00.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/28/2017 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY PIERCE FAMILY LLC.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESWNE SEC 29 TWP 6S RGE 8E PARK COUNTY.

Emigrant Peak Ranch LLC filed a notice of intent to appear.

This claim was initially consolidated as Case 43B-0309-R-2022 with the other claim identified in the decree exceeded issue. The February 16, 2022 Court Minutes, Order Entering Defaults, Order Setting Filing Deadlines and Orders Updating Caption And Mailing List for that Case states that “the decree exceeded issue remark is erroneous and should not have been added. The parties do not need to address this remark.”

At the January 31, 2023 scheduling conference for this Case, the point of diversion issue remark and the notice of intent to appear were discussed. The February 7, 2023 Court Minutes state:

The parties agreed with the Court memorializing their positions in these Minutes rather than filing additional documentation, as follows: the parties agreed the point of diversion stated in the Preliminary Decree is correct and should not be changed, the issue remark is erroneous as it refers to the point of diversion change after 1973 through the change authorization process, the issue remark should be removed without further proceedings, and the notice of intent to appear is accordingly withdrawn.

On February 15, 2023 Emigrant Peak Ranch LLC filed a Notice Of Correction Of Record stating that the change authorization which they referenced is for a different claim and is not relevant to this claim, that this misstatement was discussed with Bill Pierce, and that this does not impact the rest of their agreement as memorialized in the Court Minutes. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. As Pierce Family LLC is the current owner of this claim, the ownership remark should be removed as now moot.
2. The decree exceeded issue remark was erroneously added to this claim. It should be removed as erroneous.
3. The Preliminary Decree states that the point of diversion is in the SESWSE section 20, T6S, R8E, PARK. This legal description should not be changed. The point of diversion issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The Statement of Claim and the information provided by the parties is sufficient to resolve the point of diversion issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193598-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PIERCE FAMILY LLC
312 S 6TH ST
LIVINGSTON, MT 59047

Priority Date: JUNE 1, 1902

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SIXMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	20	6S	8E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	20	6S	8E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

193596-00

193598-00